

89-115
NO.

Supreme Court, U.S.

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JOSEPH C. SPANIOL, JR.
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In the
Supreme Court of the United States

OCTOBER TERM, 1989

JOHN A. SCHEXNIDER
AND ALLISON SCHEXNIDER
Petitioners

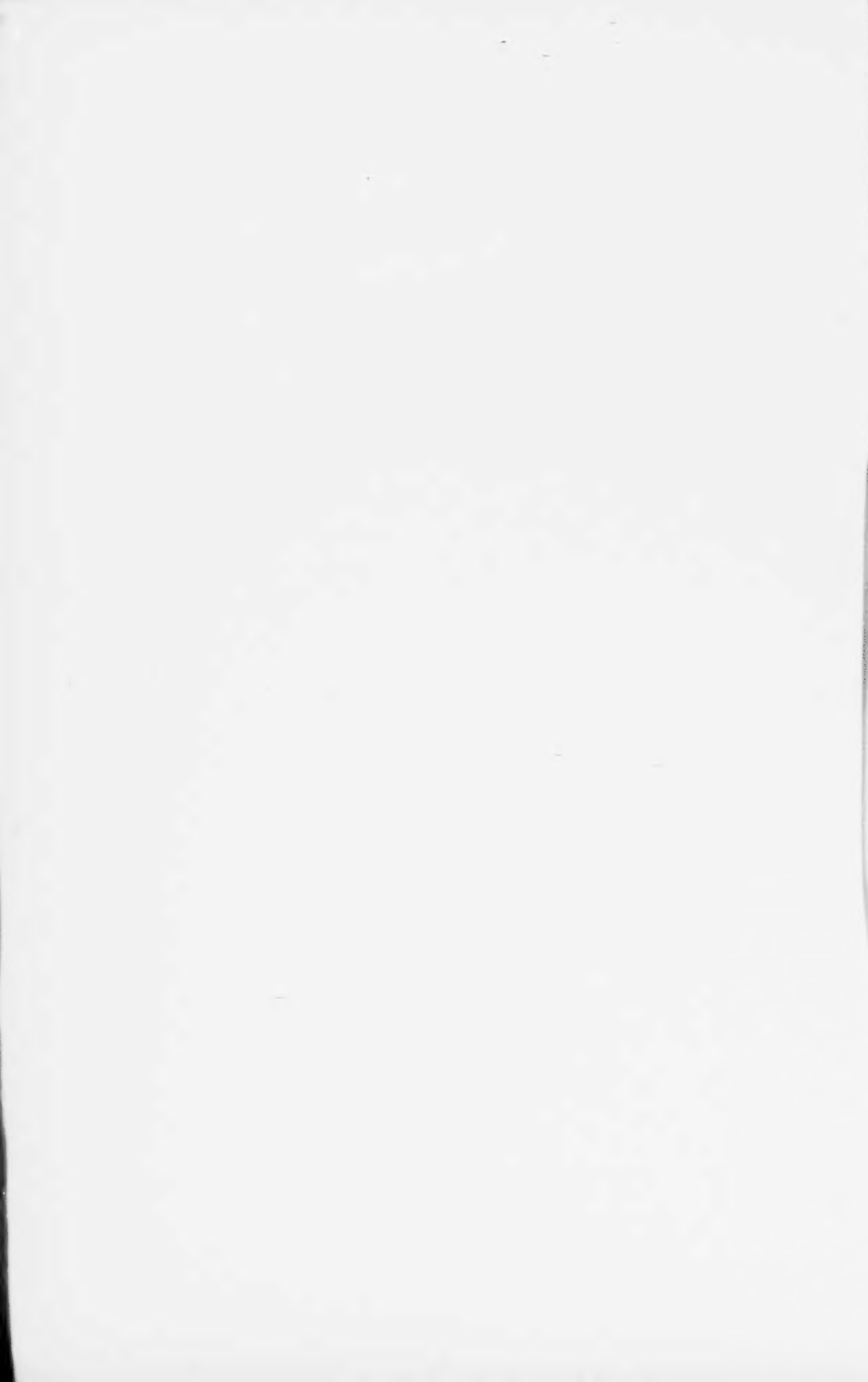
versus

McDERMOTT INTERNATIONAL, INC.,
McDERMOTT, INC.
and INSURANCE COMPANY OF NORTH AMERICA
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the United States Fifth Circuit Court of Appeal err in concluding that United States maritime law did not apply to an injury sustained by a United States citizen who signed a contract of employment as a seaman in the United States with McDermott, Inc./McDermott International, Inc. (U. S. Corporations) and who was assigned to work aboard a vessel owned by McDermott Australia, Ltd. (a foreign corporation) which is a wholly owned subsidiary of McDermott, Inc./McDermott International, Inc. (U.S. Corporations)?

2. Did the United States Court of Appeals for the Fifth Circuit fail to consider the volumes of documentary and deposition evidence filed subsequent to its first decision, which evidence clearly established that the affairs of McDermott Australia, Ltd. were conducted from 1010 Common Street, New Orleans, Louisiana?

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OPINIONS BELOW

The initial Opinion of the United States District Court for the Western District of Louisiana, Lake Charles Division, is dated June 23, 1986, and is unreported, but appears as App. A, *infra*, pp. A1-A13. The Opinion of the United States Court of Appeals for the Fifth Circuit is reported at 817 F.2d 1159 and appears as App. B, *infra*, pp. A14-A25. McDermott, Inc./McDermott International, Inc.'s Petition for a Writ of Certiorari and a Cross Petition for Writ of Certiorari were filed. The original Writ of Certiorari was denied. 108 S.Ct. 163 (1987).

The next opinion of the United States District Court for the Western District of Louisiana, Lake Charles Division is unreported, but appears as App. C, *infra*, pp. A26-A69. The next Opinion of the United States Court of Appeals for the Fifth Circuit is reported at 868 F.2d 717 and appears as App. D, *infra*, pp. A70-A79.

JURISDICTION

The judgment of the court below (App. C, *infra*, pp. A26-A69) was entered on August 22, 1988. An appeal was taken to the United States Fifth Circuit Court of Appeal which affirmed in a decision rendered on March 16, 1987, and reported at 868 F.2d 717 (App. D, *infra* pp. A70-A79). An application for hearing was denied on April 11, 1989. The jurisdiction in the District Court and the Court of Appeal was under the General Maritime Law. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

STATEMENT OF THE CASE

John A. Schexnider and Allison Schexnider, domiciled in Lake Charles, Louisiana, filed a seaman's complaint against McDermott International, Inc. and McDermott, Inc. on December 28, 1981 in the United States District Court for the Western District of Louisiana for injuries sustained by John A. Schexnider on April 12, 1981, when he fell down stairs on the DERRICK BARGE 21, alleged to be owned by McDermott International, Inc. or McDermott, Inc., seeking damages for a back injury under the Jones Act and General Maritime Law for unseaworthiness and maintenance and cure. The DERRICK BARGE 21 was located in the Java Sea off the coast of Indonesia.

McDermott International, Inc. and McDermott, Inc. answered the Complaint and admitted that both corporations were *authorized to do and doing business in the State of Louisiana*; that John A. Schexnider was a *seaman* and a member of the crew of DERRICK BARGE 21, a vessel owned by McDermott International, Inc. and McDermott, Inc.; that said vessel was operating in the Java Sea off the coast of Indonesia; that John A. Schexnider was employed as a clerk on the vessel; and that the Jones Act was applicable to the situation.

After four continuances and after counsel travelled to Bombay, India and Singapore to depose McDermott personnel, the case was set trial on October 7, 1985, in Lake Charles, Louisiana.

Prior to the trial, McDermott International, Inc. and McDermott, Inc. filed a pretrial statement admitting jurisdiction and denying any issues of law were applicable. In essence it was a simple Jones Act, unseaworthiness claim. Within one month of trial, McDermott Interna-

tional, Inc. an McDermott, Inc. amended their answer alleging that the DERRICK BARGE 21 flew the Australian flag and the law that should apply to the unseaworthy condition was that of Australia and filed two Motions in Limine, the first alleging plaintiff's criminal conviction of 1970 was admissible, and the second alleging that Coast Guard and/or OSHA standards did not apply to the DERRICK BARGE 21 because it flew the Australian flag and that Australian regulations applied for an unseaworthiness claim.

Finally, McDermott International, Inc. and McDermott, Inc. filed an amended answer stating "McDermott International, Inc. is the parent company of McDermott Australia, Inc., which is its wholly owned subsidiary. McDermott Southeast Asia, Pte. Ltd. at the time of the accident, was a wholly owned subsidiary of McDermott, Inc."

Both Motions in Limine were argued on the morning of trial, October 7, 1985, after a jury was selected. The Court, on its own motion, declared a mistrial.

On November 4, 1985, McDermott International, Inc. and McDermott, Inc. filed a Motion to Dismiss alleging plaintiff failed to state a claim against the owner of the vessel DERRICK BARGE 21, McDermott Australia, Ltd., the charterer of the vessel, McDermott Southeast Asia, Pte. Ltd. and thus the plaintiffs' claim as to McDermott International, Inc. and McDermott, Inc. should be stricken under Federal Rules of Civil Procedure 12(F) and further contending that McDermott Australia, Ltd. and McDermott Southeast Asia, Pte. Ltd. were indispensable parties "as neither McDermott, Inc. nor McDermott International, Inc. was in *privity* to McDermott Australia, Ltd. or McDermott Southeast Asia, Pte., Ltd."

The Court denied this motion on January 22, 1986, because plaintiff was amending to sue the insurer of "all McDermott companies" and adding McDermott Southeast Asia, Pte. Ltd. and McDermott Australia, Ltd.

Amended complaints were filed suing INA as insurer of all McDermott companies and McDermott Southeast Asia Pte., Ltd. and McDermott Australia, Ltd. as owner/operator/charterer of the DERRICK BARGE 21. Answers were filed wherein INA admitted insuring all McDermott companies and admitting McDermott Southeast Asia, Pte., Ltd. and McDermott Australia, Ltd. were wholly owned subsidiaries of McDermott International, Inc. and McDermott, Inc.

McDermott International, Inc., McDermott, Inc., McDermott Southeast Asia, Pte., Ltd. and McDermott Australia, Ltd. then filed a Motion for "Reargument on Motion for Choice of Law and Motion to Dismiss." The trial was reset for April 21, 1986 and this motion was referred to the merits. An opposition brief was filed by John and Allison Schexnider. The Court then held a pretrial conference on April 4, 1986, continued the trial set for April 21, 1986, and asked for supplemental briefs on Forum Non Conveniens, which were filed.

The Court ordered and held a Status Conference on May 22, 1986 and ordered McDermott International, Inc., McDermott, Inc., McDermott Southeast Asia, Pte., Ltd. and McDermott Australia, Ltd. to answer Request for Admissions filed by John A. Schexnider on September 16, 1982 and indicated Australian law may be applicable and plaintiff should amend. This was ordered to be done in eight days. John and Allison Schexnider did amend for the fourth time to allege Australian law in the alternative may be applicable. McDermott International, Inc., McDermott,

Inc., McDermott Southeast Asia, Pte. Ltd. and McDermott Australia, Ltd. filed answers to the Request for Admissions.

On June 3, 1986, order entered June 6, 1986, the Court dismissed McDermott Southeast Asia, Pte., Ltd. and McDermott Australia, Ltd. without prejudice under the Court's Local Rule 4, granting John and Allison Schexnider thirty days to reinstate the action for good cause shown.

The case was set for trial on October 6, 1986. The Court filed its "Ruling Upon Defendants' Motion to Dismiss" on June 23, 1986 and entered Judgment dismissing the case on June 23, 1986.

In its opinion, the District Court stated it was "considering the motion pursuant to Rule 56, the Court has considered all of the facts and the references to be drawn therefrom in a light most favorable to the plaintiff." There was never a stipulation of facts filed or submitted by either party to the case.

The *entire* case was dismissed on *Forum Non Conveniens*.

On Appeal, the United States Court of Appeal for the Fifth Circuit, at 817 F.2d 1159 (5th Cir. 1987), held Australian Law should be applied and remanded the case to the District Court with instructions to retain jurisdiction and to apply Australian Law to this maritime claim.

McDermott, Inc., McDermott International, Inc. and INA applied for writs to the Supreme Court presenting this question:

“Did the United States Fifth Circuit Court of Appeals misapply the standards of *Gulf Oil Corp. v. Gilbert* in overturning the United States District Court for the Western District of Louisiana’s decision to transfer an Australian Law case to Australia under the doctrine of *forum non conveniens*?”

Petitioners herein filed a cross petition for Writ of Certiorari. The writ filed by McDermott was denied, thus the cross petition for a writ was not considered.

Upon remand, McDermott, Inc., McDermott International, Inc. and INA filed a Motion to Dismiss/for Summary Judgment and to Strike pursuant to F.R.C.P. 12(b)(6) and 56, which motions were denied with two separate written reasons by the District Court. The latter ruling by the District Court held plaintiffs could proceed under the Louisiana Direct Action Statute against INA.

McDermott, Inc., McDermott International, Inc. and INA filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. The District Court with written reasons denied this motion on the grounds that the Court had maritime jurisdiction.

The plaintiffs amended to sue McDermott Southeast Asia Ltd., PTE and McDermott Australia Ltd. McDermott, Inc., McDermott International, Inc. and INA filed a Motion for More Definite Statement Pursuant to F.R.C.P. 12(E). The Court ordered plaintiffs to amend their complaint in ten days and plaintiffs complied.

McDermott, Inc., McDermott International, Inc. and INA filed a Motion to Strike Jury Trial. The District Court with written reasons ordered the trial be with an advisory jury.

McDermott, Inc., McDermott International, Inc. and INA filed a Motion to Strike certain allegations in plaintiffs' complaint alleging that the IRS had taxed the income of its wholly owned subsidiaries such as McDermott Southeast Asia Ltd., PTE and McDermott Australia, Ltd. McDermott Southeast Asia Ltd., PTE and McDermott Australia, Ltd. filed a Motion to Dismiss under F.R.C.P. 12. Their motions were granted with written reasons and McDermott Southeast Asia Ltd., PTE and McDermott Australia, Ltd. were dismissed without prejudice for lack of personal jurisdiction and the Motion to Strike allegations that the IRS had taxed the income of McDermott's foreign wholly owned subsidiaries, McDermott Southeast Asia Ltd., PTE and McDermott Australia, Ltd. was granted.

Trial was held before the District Court sitting without a jury (by agreement) on July 18, 19, 20 and 21, 1988 and judgment was rendered in favor of the defendants. The District Court stated it could not determine from the facts what caused John A. Schexnider to fall and found McDermott, Inc./McDermott International, Inc. and INA free of any negligence under Australian Law.

Petitioners appealed to the United States Court of Appeals for the Fifth Circuit specifically alleging, among other things, that Australian Law should not have been applied because of additional evidence filed into the record bearing on the relationship of McDermott, Inc./McDermott International, Inc. with its foreign subsidiaries such as McDermott Australia, Ltd.

The United States Court of Appeals for the Fifth Circuit affirmed at 868 F.2d 717 and held that petitioners had failed to cite any reason for reconsidering the application of Australian Law which had not been raised in the original Fifth circuit decision.

A Petition for Rehearing was filed citing from petitioners brief on appeal the new evidence filed into the record which supported the petitioners position - that Australian Law should not have been applied. The Petition for Rehearing was denied.

STATEMENT OF THE FACTS

The following facts were established in the record before the first opinion of the United States Court of Appeals for the Fifth Circuit at 817 F.2d 1159 (5th Cir. 1988).

John A. and Allison Schexnider are American Citizens domiciled in Lake Charles, Louisiana and were domiciled there when the accident occurred on April 12, 1981.

John A. Schexnider entered into a contract of employment with McDermott International, Inc. in New Orleans, Louisiana on March 14, 1981 to work in Southeast Asia. The contract provides that Schexnider is covered by compensation benefits of the United States, if injured.

The Derrick Barge 21 was owned by McDermott Australia, Ltd. and chartered to McDermott Southeast Asia, Pte., Ltd. and in April, 1981, was working in the Java Sea off the coast of Indonesia.

John A. Schexnider was assigned to work aboard the DB 21 as a seaman and fell down a flight of stairs on April 12, 1981 severely injuring his back.

McDermott International, Inc. is authorized to do and does business in the State of Louisiana. (Admitted in defendants' original answer.)

McDermott, Inc. is authorized to do and does business in the State of Louisiana. (Admitted in defendants' original answer.)

McDermott International, Inc. is the parent company of McDermott Australia, Inc. which is its wholly owned subsidiary. (Admitted in defendants' supplemental answers.)

McDermott, Inc. is the parent company of Southeast Asia, Pte., Ltd. which is its wholly owned subsidiary. (Admitted in defendants' supplemental answers.)

McDermott, Inc. in 1981 was the parent corporation and owned McDermott International, Inc. and about two hundred subsidiary corporations including foreign corporations such as McDermott Australia, Ltd.

McDermott, Inc. has its principal place of business at 1010 Common Street, New Orleans, Louisiana.

As of April 12, 1981, INA had issued a policy of insurance to "McDermott Incorporated, et al, P. O. Box 61961, New Orleans, Louisiana 70160" listing all corporations and companies owned worldwide and providing insurance coverage.

John A. Schexnider was paid maintenance and cure by INA out of New Orleans, Louisiana.

John A. Schexnider had two serious back surgeries by Dr. Clark Gunderson of Lake Charles, Louisiana.

The flag of the Derrick Barge 21 was

Australian but it was one of convenience used to obtain business in that area of the world.

McDermott, Inc. is traded on the New York Stock Exchange and is an American company.

At the trial on the merits before the United States District Court for the Western District of Louisiana, additional depositions and documentation concerning the status of McDermott and its foreign subsidiaries were put into evidence and established the following additional facts.

In 1981, McDermott, Inc. owned all the stock of McDermott International, Inc. and either McDermott, Inc. or McDermott International, Inc. wholly owned McDermott Australia, Ltd. and McDermott Southeast Asia, Ltd., PTE.

In 1982, McDermott, Inc. began selling its stock to McDermott International, Inc. for tax reasons. These reasons are clearly delineated in the 10Ks which were filed with the federal government and are part of the record.

In 1982, the IRS took the position that certain foreign income of McDermott, Inc. was subject to United States federal income tax. To avoid this income tax liability, McDermott International, Inc. acquired the shares of McDermott, Inc.

McDermott, Inc. and McDermott International, Inc. and the nerve center of the McDermott companies are located at 1010 Common Street, New Orleans, Louisiana. It is admitted that the Board of Directors of these corporations meet in New Orleans and conduct their affairs

from New Orleans. Various subsidiary corporations, entirely financed by McDermott Inc. and McDermott International, Inc. were set up in various countries for profit. To maintain control, the majority of the boards of directors of the foreign subsidiaries were persons who sit on the board of directors of McDermott International, Inc. and McDermott, Inc.

Also at 1010 Common Street, New Orleans, Louisiana, are located a legal staff, accounting staff and support staff utilized by McDermott, Inc. and McDermott International, Inc. to monitor and control the financial and legal affairs of its subsidiaries worldwide. A certain type of method was utilized to allocate the cost of the legal, accounting and administrative services of the subsidiaries. For example, if McDermott Australia or McDermott Southeast Asia require legal or accounting services, those services are provided through 1010 Common Street, New Orleans, Louisiana, and a charge is made to the foreign subsidiary for the work done.

Walter Hazard, a marine surveyor type person, operates out of New Orleans and maintains and controls the surveys and records on all McDermott vessels in the world, including the LAY BARGE 21 owned by McDermott Australia.

The pension and profit sharing plan of McDermott, Inc. and McDermott International, Inc. applies to all of the personnel employed by the McDermott subsidiaries. The INA insurance policy issued in 1981 insures all McDermott entities worldwide. This policy is issued to 1010 Common Street, New Orleans, Louisiana, to insure McDermott and all of its liabilities for all of

their companies all over the world.

The income from all of the McDermott subsidiaries including McDermott Southeast Asia and McDermott Australia, are incorporated in the 10K form filed with the Securities and Exchange Commission. In fact, all of the subsidiaries with regard to income and expenses are treated for the purposes of the 10K as one company.

McDermott Southeast Asia and McDermott Australia conduct day to day operations in foreign countries. While that may be true, the legal, accounting and administrative functions of its corporations are managed and/or monitored at 1010 Common Street, New Orleans, Louisiana, at McDermott International, Inc. and McDermott, Inc. tried to get around this by saying that they charge the Australian and Singapore companies fees for those administrative services, but, in fact, the subsidiaries are controlled in New Orleans because they are wholly owned.

The 10K forms reflect that lawsuits have been filed by foreign countries and companies against McDermott in New Orleans for work done in foreign countries by McDermott subsidiaries. This is done because the real headquarters of McDermott and all of its subsidiaries is New Orleans, Louisiana.

ARGUMENT

John A. Schexnider and Allison Schexnider originally filed a Jones Act claim in the United States District Court for the Western District of Louisiana, Lake Charles,

Division, against his employer and owner of the Derrick Barge 21, McDermott, Inc. and McDermott International, Inc. for injuries sustained on April 12, 1981.

In April of 1986, the United States District Court for the Western District of Louisiana dismissed the entire claim on choice-of-law and *forum non conveniens*. The District Court found Australian law governed the case and dismissed the case to be refiled in the Australian Courts.

The United States Court of Appeals for the Fifth Circuit affirmed the District Court's determination that Australian Law applied but remanded the case to the District Court for trial. *Schexnider v. McDermott*, 817 F.2d 1159 (5th Cir. 1987).

After the case was remanded to the District Court, thousands of pages of deposition testimony and exhibits were introduced at the trial which was held on July 18, 19, 20 and 21, 1988 in Lake Charles, Louisiana, proving that in 1981 McDermott, Inc. owned McDermott International, Inc. and about two hundred subsidiary corporations including McDermott Australia, Ltd., which owned the DB 21; that in 1982 the IRS took the position that certain foreign income of McDermott, Inc. was taxable, so McDermott International, Inc. began to acquire the stock of its parent McDermott, Inc.; that McDermott, Inc./McDermott International, Inc. have their offices at 1010 Common Street, New Orleans, Louisiana; that all accounting and legal services for all subsidiaries are performed in New Orleans, and the services are charged back to certain subsidiaries; that the marine surveyors in New Orleans survey all McDermott vessels worldwide; that INA issued insurance policies to McDermott, Inc. in New Orleans insuring all McDermott companies worldwide; that some of the Board of Directors of McDermott, Inc./McDermott Inter-

national, Inc. sit on the boards of the subsidiaries to maintain control; that at least one board meeting of McDermott Australia, Ltd. was held in New Orleans, Louisiana; that the Pension and Profit Plan for McDermott, Inc./McDermott International, Inc. applies to all McDermott employees in all subsidiaries worldwide; that per the 10K's filed with the United States Government, all McDermott companies for purposes of profit and loss are treated as one; and, finally, that McDermott, Inc./McDermott International, Inc. has been sued in the United States District Court in New Orleans for alleged negligent work performed in foreign countries by McDermott's foreign subsidiaries.

After the trial, the District Court found that McDermott, Inc. and McDermott International, Inc. were not negligent under Australian Law.

Petitioners appealed arguing among other issues that additional evidence filed in the record. The United States Court of Appeals for the Fifth Circuit disagreed. *Schexnider v. McDermott*, 868 F.2d 717 (5th Cir. 1989).

It is respectfully submitted that had the Court of Appeals applied the new evidence to the eight point test in *Lauritzen v. Larsen*, 345 U.S. 571, 73 S.Ct. 921, 79 L.Ed. 1254 (1953) that Australian Law would not have been applied in this case.

In *Lauritzen v. Larsen*, *supra*, the Supreme Court sets out an eight point test, to-wit:

1. Place of the wrong;
2. Law of the flag;
3. Domicile of injured seaman;
4. Allegiance of shipowner;
5. Place of contract;

6. Accessibility of foreign forum;
7. Law of the forum;
8. Base of operations;

Since *Lauritzen*, several cases have been produced from the various circuits, some of which are:

Symonette Shipyards, Ltd. v. Clark, 365 F.2d 464 (5th Cir. 1966). In this case the Fifth Circuit reversed a lower court and held that the choice of law should be the United States. The deceased seaman was an American employed by Americans and working on a Bahaman vessel. In this case the Court stated at page 467 as follows:

As the Supreme Court indicated in *Lauritzen*, “*
* * [E]ach nation has a legitimate interest that its nationals and permanent inhabitants be not maimed or disabled from self-support.” 345 U.S. 586, 73 S.Ct. at 930. In addition the ship's articles were signed in the United States and the contract between Symonette and Wilson to transport tanks and equipment was made in this country. The two seaman were part of a crew assembled by Wilson, an American businessman, for use on an enterprise of his located in Haiti. We are of the opinion that the citizenship of the seaman and the factors surrounding their employment are sufficient to justify applying the law of the United States.

Diaz v. Humbolt, 722 F.2d 1216 (5th Cir. 1984). In this case the plaintiff was a citizen of Peru and the defendant was a Peruvian corporation with none of its stock owned by U.S. Citizens. It was held that American law did not apply but the plaintiff was allowed to refile his suit in Peru.

Sosa v. Lago Izabal, 736 F.2d 1028 (5th Cir. 1984). In this case, a Mexican seaman brought suit against his employer, Tracey Navigation Company, a corporation organized in the Cayman Islands with ninety percent of the stock owned by Americans, for injuries sustained on a vessel flying the flag of the Cayman Islands. The Fifth Circuit held that American law applied. Please note the Fifth Circuit indicated that, although this corporation was a Cayman Island corporation, ninety percent of its stock was owned by Americans, and as such the Court did "look through the facade of foreign incorporation to the ownership behind it." the Court cited *Rainbow Line, Inc. v. M/V Tequila*, 480 F.2d 1024, 1027 (2nd Cir., 1973).

Ali v. Offshore Co., 753 F.2d 1327 (5th Cir., 1985). The deceased seamen were citizens of Trinidad who were working aboard a vessel owned by a Liberian corporation working in waters of Trinidad. The Fifth Circuit held that the law of Trinidad applied but the Fifth Circuit remanded for the District Court to consider the public versus private convenience factors set forth in *Gulf Oil Corporation v. Gilbert*, 330 U. S. 501, 67 S.Ct. 839, 91 L.Ed 1055 (1947). If the court found that the Gulf Oil Corporation factors weighed in favor of the plaintiff, the suit was to be retained in the district court.

Sigalas v. Lido Maritime, Inc., 776 F.2d 1512 (11th Cir., 1985). This is a wrongful death action on behalf of a Greek citizen, domiciled in Greece, for injuries sustained aboard a Greek flag ship owned by a Liberian corporation. Said corporation is owned by Greeks. This Court felt the case should be controlled by Greek law.

Villar v. Crowley Maritime Corporation, 782 F.2d 1478 (9th Cir., 1986). Suit on behalf of a deceased seaman who was a citizen of the Philippines working in Saudi Ara-

bian waters. The vessel was a Panama flag vessel and the deceased had been flown from the Philippines to Saudi Arabia to perform his work.

All of these cases follow the test of *Lauritzen*. Applying the eight point test to this case gives us the following:

1. *PLACE OF THE WRONGFUL ACT*

The answer seems simple, DERRICK BARGE 21, Java Sea off the Coast of Indonesia.

2. *Law of the Flag* - Australian. Walter Hazard, a senior marine surveyor with McDermott, Inc., stated in his deposition filed in the record that the DB 21 flew the Australian flag as a convenience to enable McDermott, et al to obtain work from the Australian government. This is viewed in a light most favorable to the plaintiffs.

3. *Domicile of Injured Seaman* - John and Allison Schexnider are and were domiciled in Lake Charles, Louisiana and both are American Citizens.

4. *Allegiance of Shipowner* - McDermott, Inc./McDermott International, Inc. doing business in Louisiana, owns and controls McDermott Australia, Ltd. from New Orleans, Louisiana and all McDermott companies were insured by an INA policy issued in New Orleans, Louisiana. We would suggest that McDermott, Inc./McDermott International, Inc. owe allegiance to the United States.

5. *Place of Contract* - John A. Schexnider signed his contract in New Orleans, Louisiana with McDermott International, Inc.

6. *Inaccessibility of Foreign Forum* - Australian Courts are

available. However, all of the treating physicians, vocational rehabilitation experts and most of the fact witnesses are in Louisiana.

7. *Law of the Forum*-Australian Courts are available and so are those of the United States to an American citizen.

8. *Shipowner's Base of Operations* - *Sosa, supra*, at page 1032 holds that in order to find an American base of operations, "[t]he necessary operational contact with the United States must relate to both shipowner and the ship and must be substantial."

McDermott Australia, Ltd. owns a vessel, the DB21 which flies the Australian flag to enable McDermott, Inc. to get business in that area of the world. American seamen are hired in the United States and assigned to the DB21. Marine surveyors for all McDermott companies travel from New Orleans, Louisiana all over the world to survey McDermott vessels. Insurance policies covering all foreign subsidiaries are issued in New Orleans to McDermott, Inc. and McDermott International, Inc. Members of the Board of Directors of McDermott, Inc. and McDermott International, Inc. sit on the board of McDermott Australia, Ltd. Accounting and legal services for McDermott Australia, Ltd. are furnished from 1010 Common Street, New Orleans, Louisiana. The Board of McDermott Australia, Ltd. has meetings in New Orleans, Louisiana. The Pension and Profit Plan for McDermott Australia is owned and managed in New Orleans, Louisiana by McDermott, Inc./McDermott International, Inc. McDermott Australia Ltd.'s base of operations is in New Orleans, Louisiana.

CONCLUSION

It is respectfully submitted that John A. Schexnider is an American seaman working for an American corporation. Australia has no interest whatsoever in John A. Schexnider's welfare and/or the welfare of McDermott, Inc./McDermott International, Inc. Australian Law should not have been applied to this case.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit on Behalf of Petitioners, John A. Schexnider and Allison Schexnider, has been furnished all counsel of record on this the ____ day of July, 1989.

JOSEPH J. WEIGAND, JR.